STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of E. COVINGTON, Minor.

UNPUBLISHED
October 15, 2013

No. 313509
Ingham Circuit Court
Family Division
LC No. 12-001147-NA

Before: HOEKSTRA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights pursuant to MCL 712A.19b(3)(g), (3)(j), and (3)(l). Because we conclude that the trial court did not clearly err by finding at least one statutory ground for termination was proved by clear and convincing evidence or by finding that termination was in the child's best interests, we affirm in part and remand in part for correction of a clerical error.

On July 19, 2012, Children's Protective Services (CPS) received a referral stating that respondent was charged with resisting and obstructing arrest, endangering/disturbing the peace, and possibly domestic assault. Specifically, CPS was informed that respondent was highly intoxicated and yelling and screaming while walking in and out of traffic. Respondent called the police complaining that she was injured by Bernard Covington, who is the father of the minor child and with whom she resided. The police did not observe any injuries, and accompanied respondent back to her house where she began to scream profanities while holding the minor child on her lap. Bernard informed police that respondent woke him up asking for money to buy drugs, and that when he refused respondent hit him in the head with a fan.

On July 26, 2012, CPS filed a petition asking the trial court to take jurisdiction over the minor child, remove the minor child from the home, and terminate respondent's parental rights.[1] A preliminary hearing was held on the same day, after which the petition was authorized and removal of the minor child was ordered.

[1] The petition also requested termination of the father's parental rights, and the father's parental rights were terminated in the same proceeding as respondent's rights; however, the father is not a party to this appeal.

The trial regarding jurisdiction and the hearing regarding termination of respondent's parental rights was held jointly on October 31, 2012. Respondent was the first witness to testify. She testified that she had other children, and that her parental rights to five of her other children were previously terminated due to "drug and alcohol abuse, drug use, not having a home to live in and bad choices that I made."[2] She admitted to being intoxicated on July 18 or 19, and that she and Bernard argued and that she broke a lamp and smashed a stereo. She further admitted that when she told the police that Bernard punched her and broke her jaw she was not telling the truth. Respondent also testified that she was diagnosed with bipolar disorder as well as anxiety and depression, but that she had stopped taking her medications. She testified to her history of cocaine use and alcohol abuse; however, she explained that she was now attending counseling for her alcohol and drug abuse and was no longer using drugs or alcohol. She also testified that she no longer lived with Bernard, and that she was temporarily residing with her father until she could save money to secure her own housing.

Respondent's mother, and two police officers also testified about the incident that occurred in July. One of the officers testified that Bernard told him respondent demanded $10 from him to purchase drugs. Counsel for respondent raised a hearsay objection, but the trial court stated it was "going to allow" the testimony.

Next, Tonya Martinez testified that she works for the Department of Human Services (DHS) and that she took over the case recently after the original petitioner left for medical reasons. Martinez began testifying about what the petition stated, and counsel for respondent objected, arguing that Martinez should not be permitted to testify because she lacked personal knowledge regarding whether the statements in the petition were true. The trial court stated that it was going to allow the testimony. Martinez then testified about the details surrounding respondent's prior terminations. On cross-examination, counsel for respondent asked Martinez whether she had independent knowledge of the information stated in the petition, and Martinez explained that her "testimony comes from the petition," and that she was not the petitioner, but that she was there "to represent the department."

Finally, Riheti Ngubeni testified that he was employed by DHS as a foster care worker and that he was currently assigned to respondent's case. He testified that respondent was participating in services and attending drug testing. He testified that she had two unexcused drops and missed some other drops due to miscommunication with the laboratory. He testified that the drops that were made by respondent were all negative for alcohol and that some tested positive for certain drugs, but that he was told that those drugs corresponded with respondent's prescribed medications. He testified that the minor child is doing very well where he is placed with his maternal aunt. He further testified that it was his personal opinion that respondent's parental rights should not be terminated, and that while he did not think it would be safe to return

[2] Respondent later testified that her rights were only terminated to four children, neither party ever asked respondent about this discrepancy to clear it up during trial. The petition alleged that respondent previously had her rights terminated to five different children.

the minor child to respondent immediately, he believed she should be given more time. However, he acknowledged that the department's position was that termination should occur.

Following the conclusion of the testimony and the closing arguments regarding both jurisdiction and termination, the trial court summarized the evidence and made findings of fact. The trial court then concluded that petitioner proved by a preponderance of the evidence that jurisdiction was proper. It also concluded that petitioner proved by clear and convincing evidence that all three of the alleged statutory grounds for termination were satisfied. Finally, it found that termination was in the best interest of the minor child. Specifically, the trial court stated:

> Based on this testimony, the court finds the prosecutor has met her burden of proof by clear and convincing legally admissible evidence that one or more of the facts alleged in the petition are both true and do come within MCL 712A.19b(3) of the Juvenile Code, which is termination of parental rights. The parents, without regard continue to intent, [sic] have failed to provide proper care or custody for the child. And there's no reasonable expectation they will ever be able to considering his age. And the parental rights to one or more of this child's siblings have been terminated due to serious and chronic neglect, and prior attempts at rehabilitation have been unsuccessful and there's a reasonable likelihood, based on the conduct or capacity of the parents, that the child will be harmed if returned.
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> This is a sad case because I think both of these parents do love their children, but I just don't think [respondent], I don't think you're a person who should be a parent . . . because of your underlying mental health issues, the fact that you might choose to go off your medication again and set off another episode of substance abuse.
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> Regarding the best interest, [the minor child] is currently placed with his maternal aunt and her spouse. There is a sibling of his in that home. It is in his best interest for the court to provide that kind of stability to him. It's in his best interest to live free of mayhem, to live free of the substance abuse problems that his parent have and their issues with domestic violence.
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> Regarding the mother it's clear that she has made some effort. However, she has chronic problems that are inconsistent with being able to parent this child. So it's not in his best interest to be in that situation.

An order terminating respondent's parental rights was entered following the joint jurisdiction trial/termination hearing. Later, an amended order was entered, noting that "box 12" was not checked on the original order. Box 12b is checked on the amended order, and states that the child is committed to DHS. Box 10, which is checked to state either that termination of parental rights is or is not in the best interests of the child, is not checked on either the original termination order or the amended order.

On appeal, respondent first argues that the trial court clearly erred by finding that the statutory grounds for termination were supported by clear and convincing legally admissible evidence.

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error a trial court's decision terminating parental rights. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

In this case, respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(g), (j), and (l) which provide in pertinent part:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
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> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
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> * * *
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> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.
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> * * *
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> (l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

First, respondent maintains that no legally admissible evidence regarding § 19b(3)(l) was submitted because Martinez admitted that she had no personal knowledge of the facts or circumstances regarding respondent's prior terminations, and that she was just reading the petition.[3] Further, respondent argues that her testimony regarding her prior terminations was not

[3] We note that respondent also argues on appeal that the trial court erred by permitting the hearsay testimony from the police officer who testified that Bernard told him respondent

sufficient to prove § 19b(3)(l) because it was never established that she understood the difference between termination of parental rights and a voluntary release of parental rights. Finally, respondent maintains that certified copies of her prior termination orders had to be admitted into evidence. We disagree.

First, there was no testimony regarding the voluntary release of parental rights and there is nothing in the record to suggest that respondent ever voluntarily released her parental rights to any of her children. Rather, respondent specifically testified that her parental rights to other children were previously terminated because of her "drug and alcohol abuse, drug use, not having a home to live in and bad choices that I made." It is clear that respondent, from her previous experience, understood the meaning of "termination of parental rights." Respondent's unequivocal, specific testimony acknowledging the previous termination of her parental rights to her other children was sufficient to prove § 19b(3)(l) by clear and convincing evidence. Moreover, the trial court was entitled to take judicial notice of the contents of the court files of the prior termination proceedings. See *Vittiglio v Vittiglio*, 297 Mich App 391, 409; 824 NW2d 591 (2012). Respondent cites no authority to support her contention that petitioner was required to submit certified copies of respondent's previous terminations, and we find none. Accordingly, we need not address this issue. See *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 530; 730 NW2d 481 (2007); *People v Kelly*, 231 Mich App 627, 640; 588 NW2d 480 (1998). Therefore, even assuming Martinez's testimony was inadmissible, reversal of the trial court's order is not warranted because there was other admissible evidence of respondent's prior terminations. Thus, refusal to take action is not inconsistent with substantial justice. MCR 3.902(A); MCR 2.613.

While petitioner need only prove one statutory ground to support an order for termination of parental rights, *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012), we conclude that the trial court did not clearly err by finding clear and convincing evidence to support §§ 19b(3)(g) and (j).

Respondent argues that no evidence to support the contention that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time was submitted to prove § 19b(3)(g) because the evidence demonstrated that she was following the service plan, benefiting from services, was sober, taking her medication, living in a safe environment, had family support, and had a plan to properly care for the minor child. Similarly, regarding § 19b(3)(j), respondent maintains that the trial court failed to specify why her conduct or current capacity would create a risk of harm for the minor child, and that the evidence demonstrated that she changed and benefited from services. The trial court was not

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demanded $10 from him to purchase drugs. However, even assuming the trial court erred and this testimony should not have been admitted, this error does not require reversal. See MCR 3.902(A) (providing that MCR 2.613 governs the correction of errors in proceedings involving juveniles); MCR 2.613 (stating "[a]n error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.").

persuaded, noting that respondent had taken steps to address her problems only very recently, and for a short period of time. The trial court was concerned that respondent was likely to relapse because of her long history of substance abuse and her mental health problems. The trial court also noted that it was concerned that respondent may be addicted to her prescription medications. The trial court further noted the history of domestic violence between respondent and Bernard, and found that while they were not currently living together and were no longer romantically involved, respondent admitted to maintaining a friendship with him and stated that she considers herself to be his caretaker. We defer to "the special opportunity of the trial court to judge the credibility of the witnesses who appear before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). The record demonstrates that there was testimony to support the trial court's concerns, including respondent's own admissions. Thus, on the basis of the evidence submitted at trial, we cannot conclude that the trial court's findings were clearly erroneous.

Respondent also argues that the trial court clearly erred by finding that termination of her parental rights was in the child's best interests. MCL 712A.19(b)(5); MCR 3.977(K). Specifically, respondent maintains that (1) the trial court did not adequately address the fact that the child was placed with relatives, (2) that it did not properly analyze the best-interests factors set forth by *In re Olive/Metts Minors*, 297 Mich App 35; 823 NW2d 144 (2012), in making its best interest determination, and (3) that it did not state that it was in the child's best interest to terminate parental rights on the record or in the amended order following the hearing to terminate parental rights.

We review the trial court's best-interest determination for clear error. MCR 3.977(K). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19(b)(5).

"[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss Minors*, 301 Mich App 76; 836 NW2d 182 (2013), slip op at 6. A trial court may consider evidence on the whole record in making its best-interest determination. *In re Trejo Minors*, 462 Mich at 353. Specifically, "[i]n deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted). The trial court may also consider a parent's history, an unfavorable psychological evaluation, and the child's age. See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

Regarding respondent's argument that the trial court failed to adequately address the fact that the child was placed with relatives, we conclude that the trial court's consideration of this fact was adequate.

In *In re Olive/Metts Minors*, 297 Mich App at 43, this Court stated:

> [B]ecause a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), the fact that a child is living with relatives when the case

> proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests. Although the trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests, the fact that the children are in the care of a relative at the time of the termination hearing is an explicit factor to consider in determining whether termination was in the children's best interests[.] A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal. (Quotation marks and citations omitted.)

On appeal, respondent fails to specify how the trial court's statement regarding relative placement was inadequate. In its decision, issued from the bench, the trial court specifically noted that, in regard to the best interests, the minor child lived with his maternal aunt, the aunt's spouse, and a sibling. The trial court found that the placement was stable and free of the "mayhem" the minor child experienced while living with respondent. The trial court found, at least implicitly, that respondent's history of substance abuse, mental health issues, and domestic violence warranted termination notwithstanding the fact that the minor child was placed with relatives. Thus, we conclude that the trial court's consideration of relative placement was sufficient to meet the requirements of *Olive/Metts*.

Next, we conclude that the trial court appropriately considered the relevant best-interests factors. First, we note that this Court in *Olive/Metts*, 297 Mich App at 43, held only that trial courts are required to consider a child's placement with relatives. Explicit consideration of the other factors is not required because this Court stated only that a trial court "may consider" other factors such as the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home. *Id.* at 41-42. Nevertheless, review of the record and the trial court's conclusions reveals that the trial court appropriately considered all the relevant factors. While respondent is correct that there was some evidence of her fitness to be a parent while she is sober, the evidence also demonstrated that respondent had a longstanding problem with sobriety which was a major concern of the trial court. Respondent's argument that the trial court was required to give more weight to her testimony that tended to show her progress toward overcoming her substance abuse issues is without merit. Again, we defer to "the special opportunity of the trial court to judge the credibility of the witnesses who appear before it." *In re Ellis*, 294 Mich App at 33. Moreover, the trial court specifically acknowledged the bond between respondent and the minor child, but determined that the child's need for stability outweighed that factor. Accordingly, we find no error in the trial court's best-interests determination.

Finally, we agree with respondent that the trial court failed to check the box regarding the child's best interests in its final termination order; however, we conclude that this error does not warrant reversal of the termination of respondent's parental rights because the trial court clearly found that termination was in the minor child's best interests in its oral opinion issued from the bench. Nevertheless, we remand this case to the trial court for the sole purpose of amending the termination order to correct this oversight.

Affirmed in part, remanded in part for correction of the termination order. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra